IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2886 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANJEEV SHRIVASTAVA S/O SS SHRIVASTAVA

Versus

GENERAL INSURANCE CORPORATION OF INDIA

Appearance:

MR NILESH A PANDYA for Petitioner

MR DARSHAN M PARIKH for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/04/2001

ORAL JUDGEMENT

By this petition, the petitioner has, inter alia, sought the relief of writ of mandamus directing promotion of the petitioner to the cadre of Administrative Officers (AO) from the cadre of Assistant Administrative Officers (AAO) since 1985, from the cadre of AO to the cadre of Assistant Manager (AM) from the year 1989 and from the cadre of Assistant Managers to the cadre of Deputy Managers (DM) with effect from 1994. He has also prayed

for a writ to place his name in the AO cadre and its seniority list as if he was promoted to the cadre of A.O. in the promotional exercise of 1985. He has also sought a direction for all consequential benefits including the interest at the rate of 24% per annum on all financial dues, leave encashment, leave travel subsidy from 1984 to 1988 and prospectively.

2. The petitioner was put under suspension between 1984 to 1988 by order dated 29.6.1984. This suspension was imposed upon the petitioner in view of three charge sheets dated 12.9.1983, 10.5.1984 and 8.2.1985 on various charges while the petitioner was working at Jabalpur Divisional Office as an Administrative Officer. Ultimately, penalties were imposed upon the petitioner which were challenged before the Madhya Pradesh High Court wherein Madhya Pradesh High Court quashed and set aside the penalty imposed, but the employer was permitted to hold the inquiry afresh. This judgment was delivered on 20.4.1994. Ultimately, a de novo inquiry was held against the petitioner and barring two small charges contained in charge sheet dated 12.9.1983, all the other charges were held to be not proved. The charge proved was delay in submission of T.E. Bills and partly proved was delay in refunding the T.E. Advances with respect to which the petitioner was censured by order dated 21.9.1995.

3. The basic contention of the petitioner in the petition is that in his case, since disciplinary proceedings were pending, sealed cover procedure ought to have been followed which is not done. Apart from this, he has also submitted that since the petitioner was under suspension from 1984 to 1988, there was no scope for anyone assessing his work and, therefore, also his interest has been prejudiced.

However, at the time of hearing of an application for amendment given by the petitioner, the petitioner presented before this Court a copy of Fax letter dated 8.9.1997 written by the petitioner to the respondent Company and desired that the whole matter may be disposed of on this basis. In the said letter, the petitioner has, inter alia, stated as under :-

"I undertake that if you are kind enough to allow my appeal partly by placing my seniority in A.O. cadre against the promotional exercise of year 1985 which will enable my next promotion early, then entire matter will stand closed from my side.

I further undertake that matter will be buried finally forever as unfortunate incident in my service career."

4. The petitioner is present in the Court and on inquiry he has said that he sticks to this letter and submits that he may be given a date in the cadre of A.O. on and from 1985, from the date on which his batch mates were promoted to this cadre of A.O., without giving him any other benefits either of pay, notional pay fixation or promotion to any higher cadre for the period upto March, 2000. However, he should be considered in the promotional exercise from 1.4.2000 from the cadre of A.O. to A.M. (results whereof are likely to be declared in May or June 2001), as if his seniority in the cadre of A.O. is from 1985 and he should be considered for promotion. Accordingly, if these reliefs are granted, the petitioner does not press for any other relief.

5. The Court has, therefore, called upon the learned counsel to make submissions only on the above aspects and have heard them at length on these issues. In view of the aforesaid statements made by and on behalf of the petitioner, this Court is not inclined to go into any other controversy at this stage and is inclined to decide only the short question whether the petitioner should be treated in the cadre of A.O. since 1985 or not. There is no question of this Court deciding the other issues raised in view of the fact that this Court is inclined to accept the submission of the petitioner, for the reasons recorded hereinafter, that his seniority in the cadre of A.O. should be as of 1985, from the date on which his batch mates were promoted in the cadre of A.O. from the cadre of A.A.O. However, he shall not be entitled to any monetary benefit for that period. He shall also not be entitled to any notional fixation of pay scale as of that date. He shall also not be entitled to any promotion as claimed by him in relief clause 16.7(1) of the petition. He shall also not be entitled to relief 16.7(2) and 16.7(3). It is also clarified that in any promotional exercise after 1.4.2000, where the petitioner has participated for promotion from the post A.O. to A.M., the seniority of the petitioner in the cadre of A.O. shall be reckoned from 1985.

6. The submission made by the respondent Company in its affidavit-in-reply is, inter alia, to the effect that the petitioner was considered for promotion in the Annual promotion exercise of 1984 since he came within the zone of consideration. However, he was not promoted/selected

because his performance/work record was not upto the requisite standard. Thereafter because of his conduct on duty he was charge sheeted and placed under suspension from 1984 to 1987. However he was considered for promotion in each successive year from 1984, but because he failed to meet the requisite standard he was not promoted. Those who were promoted had far better grades than him. His performance was not upto the mark. His seniority by itself was neither sufficient nor the only requisite for promotion. Seniority alone was not the sole criterion for promotion. It can never be in the interest of public policy that promotion be made mechanically - on the basis of seniority. This would lead to rewarding the indolent, inefficient. This is borne out from the act that throughout the promotion exercises of the answering respondent there will be many instances when senior persons have not been promoted (on the basis of their seniority alone) since they did not perform upto requisite standard. It is also noteworthy that the answering respondent has followed the practice of confidential reports right from its inception. This is necessary in order to assess the performance of the officers of the Company and their ability to adopt, develop, work performance, efficiency, etc. and their ability to handle more responsible/higher positions. Had the performance not been an essential criterion of consideration in promotion, the system of confidential reports would be redundant. It is also stated in para 20 as under :-

"It is admitted that the petitioner was promoted to the post of A.O. on 27.9.1996. It is denied that the petitioner was denied any right as alleged, nor does he have any rights as mentioned or claimed. It is also denied that the petitioner was promoted in 1996 only because he had been exonerated in 1995. On the contrary, he was considered for promotion in all the years preceding 1996, however, he failed to qualify. His performance and track record was not upto the requisite mark hence he was not promoted. His seniority by itself was neither sufficient nor the only requisite for promotion. Seniority alone was not the sole criterion for promotion. Those who were promoted had far better grades in work performance and recommendations for promotion that the petitioner. The petitioner's performance was not upto the mark hence he was not selected for promotion. Since he was not found suitable for promotion the process of sealed cover procedure was not necessitated.

> Sealed cover procedure is necessitated only when a candidate is found suitable for promotion but there happens to be disciplinary proceedings pending against the candidate. In the petitioner's case the situation never arose since in the first instance itself the petitioner was never found suitable for promotion paras 6, 7 and 8 supra are reiterated."

7. The learned counsel for the petitioner also states under instructions from the petitioner who is present in the Court that there were no adverse remarks against the petitioner prior to 1984 or after 1987.

8. From the above, it is very clear that in the first place the sealed cover procedure was not followed in case of the petitioner. It is also equally clear that the affidavit in reply does not disclose as to on what particular basis the petitioner's performance and track record was considered to be not upto the requisite mark. The petitioner was under suspension from 1984 to 1987 in connection with certain charges which were ultimately not proved at the departmental inquiry, except a couple of minor charges for which the petitioner was only visited with censure. It means that the suspension was not justified. Had the petitioner not been subjected to suspension for such a long period of three years, the petitioner would have got the opportunity to render his services and show his performance. The fact that the petitioner was denied his right to render his services on the basis of the charges which were ultimately not substantiated at the departmental inquiry, the petitioner's case ought to have been considered not merely by ignoring the period of suspension but also by considering the petitioner's performance in the subsequent periods without being influenced by the period of suspension or without being influenced by the fact that the confidential reports were obviously not available for the period between 1984 and 1987. It is true that ordinarily this Court would, therefore, remand the matter to the respondents for reconsidering the petitioner's case for deemed date of 1985 when the petitioner's juniors were promoted to the posts of Administrative Officer. However, considering the fact that the petitioner has given up his right to get all the consequential benefits flowing from the deemed date which the petitioner may get on reconsideration including even the right to get notional pay fixation or promotion in the higher cadre of Assistant Managers, it appears to the Court that it would be just and proper if the respondents are directed to give the petitioner deemed date in the

cadre of Administrative Officers with effect from 1985 when his immediate juniors were promoted.

9. The petition is, therefore, partly allowed and the respondents are directed that for the purpose of seniority alone, the petitioner's name shall appear in the cadre of Administrative Officers and in the seniority list thereof, as if the petitioner was promoted in the cadre of A.O. in the year 1985. The petitioner shall be given a date in the cadre of Administrative Officers from 1985, from the date on which his batch mates were promoted to the cadre of Administrative Officers without giving him any other benefit either of pay, notional pay fixation or promotion to any higher cadre for the period upto March, 2000. However, the petitioner's case shall be considered in the promotional exercise from the cadre of Administrative Officers to the cadre of Assistant Managers from 1.4.2000 (results whereof are likely to be declared in May or June 2001), as if his seniority in the cadre of Administrative Officers is from 1985 and he shall be considered for promotion accordingly.

10. Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S. Shah, J.)

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